



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 20, 2012

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2012-20601

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 474343 (ORR 12-12385)).

The Dallas Police Department (the "department") received a request for a specified investigation file. You have marked information for redaction, including a driver's license number under section 552.130(c) of the Government Code and a social security number under section 552.147(b) of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office the information described by subsections 552.130(a)(1) and (a)(3). Gov't Code § 552.130(c); *see id.* § 552.130(d) (entitling requestor to appeal governmental body's decision to withhold information pursuant to section 552.130(c) to attorney general), .130(e) (requiring governmental body that withholds information pursuant to section 552.130(c) to provide notice to requestor). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note a portion of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-17820 (2012). In that ruling, we determined, in regard to the submitted information, the department may withhold the information it marked under section 552.108(a)(1) of the Government Code, but must release the remaining information, including the dates of birth of the complainant and the suspect. However, you now seek to withhold these dates of birth under section 552.108 of the Government Code.<sup>3</sup> Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Thus, pursuant to section 552.007, the department may not now withhold the information that was previously released, unless its release is expressly prohibited by law or the information is confidential by law. As noted above, you now raise section 552.108 for the information we previously ordered released. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Therefore, the department may not withhold these dates of birth, which we have marked for release, under section 552.108. Accordingly, as we have no indication the law, facts, and circumstances on which Open Records Letter No. 2012-17820 was based have changed, we conclude the department must continue to rely on that ruling as a previous determination and withhold the information it marked under section 552.108(a)(1) of the Government Code and release the remaining information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address your arguments under sections 552.101 and 552.108 for the submitted information not encompassed by Open Records Letter No. 2012-17820.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental

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<sup>3</sup>We note in Open Records Letter No. 2012-17820, the department sought to withhold these dates of birth under section 552.101 of the Government Code in conjunction with section 32.51 of the Penal Code, section 521.051 of the Business and Commerce Code, and common-law privacy.

body must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information you have marked pertains to a pending criminal investigation and prosecution. Based on your representations and our review, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold the remaining marked information under section 552.108(a)(1) of the Government Code.<sup>4</sup>

In summary, the department must continue to rely on Open Records Letter No. 2012-17820 as a previous determination, and withhold the identical information it marked under section 552.108(a)(1) and release the remaining information at issue, including the dates of birth we have marked for release, in accordance with that ruling. With respect to the information not encompassed by Open Records Letter No. 2012-17820, the department may withhold the marked information under section 552.108(a)(1). The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/ag

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<sup>4</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

**Ref: ID# 474343**

**Enc. Submitted documents**

**c: Requestor  
(w/o enclosures)**